



Draft Law no. 138/XIII

Transposition of the Insurance Distribution Directive

**New Rules on Insurance are coming to
Portugal...**

“The DL 138/XIII is in line with the terms laid down in the IDD, strengthening the duties of insurance distributors, which are expected to have a greater impact on the organization and activity of insurance intermediaries than on insurance undertakings”

On 19 June last, the Portuguese Parliament has received the Draft Law no. 138/XIII ("**DL 138/XIII**"), which amends the legal regime governing the access to and the exercise of the insurance and reinsurance activity and the procedural regime applicable to the special crimes in the insurance and pension funds sector and to the administrative offences whose processing is the responsibility of the Supervisory Authority for insurance and pension funds, transposing into the Portuguese legal order the Directive (EU) 2016/97, better known as Insurance Distribution Directive ("**IDD**").

The deadline for the transposition of the IDD was extended from 23 February 2018 to 1 July 2018, and the Member-States should apply the respective rules by 1 October 2018⁽¹⁾.

The DL 138/XIII is in line with the terms laid down in the IDD, strengthening the duties of insurance distributors, which are expected to have a greater impact on the organization and activity of insurance intermediaries than on insurance undertakings, since such undertakings, by virtue of the current Legal Regime of the Access to and the Exercise of the Insurance and Reinsurance Activity ("**RJASR**"), are already bound to several organizational and activity rules, without prejudice to the new rules foreseen in the DL PL 138/XIII, such as, new rules on the design of insurance products to be introduced in article 153 of RJASR.

Among the rules established in DL 138/XIII, we highlight the following amendments:

- Introduction of the concepts of **insurance distribution and distributors**, laying down a common regime applicable to the insurance intermediaries, to the insurance intermediaries on an occasional basis and to the insurance undertakings, in order to ensure the same level of protection to the insurer regardless of the distribution channel;
- **End of the tied insurance intermediaries category**, stipulating that the natural and legal persons registered in such category will be automatically considered registered in the categories of insurance



⁽¹⁾ Cfr. Directive (EU) 2018/411 of the European Parliament and of the Council, of 14 March 2018, amending Directive (EU) 2016/97 as regards the date of application of Member States' transposition measures.

agent and of insurance intermediary on an occasional basis, respectively;

- **Strengthening and development of the good repute assessment procedure**⁽²⁾, largely following the current regime foreseen in RJASR applicable to the assessment of the good repute of the persons managing, supervising or performing key functions in the insurance undertakings;
- **Increase of the requirements and minimum contents of the insurance courses**;
- **New rules on professional training** and continuous improvement, requiring the participation in training and improvement sessions, with a minimum duration of 15 hours and granting a conclusion certificate;
- New rules applicable to **cross-selling**, increasing the information duties and requiring that the insurance intermediators, when selling insurance products together with an ancillary product or service which are not an insurance, offer to the client the possibility to buy the different components separately;
- Strengthening of the **rules and procedures on the internal organization** of the insurance distributors, which, presumably, will have a greater impact on the insurance intermediators than on the insurance undertakings, since the latter have already adopted more developed internal organizational arrangements;
- Increase of the **pre-contractual information duties** of the insurance distributors, now requiring, in case of distribution of non-life insurance products, the drafting and delivery to the client of an Insurance Product Information Document;
- New rules on the **remuneration arrangements** of the insurance distributors, aiming at preventing any conflicts of interest, notwithstanding the fact that the European and national legislators have opted to not specifically list which remuneration arrangements become inadmissible;
- Provision of new additional requirements for the distribution activity of **insurance-based investment products** ("IBIPS"), being clear from the wording of the DL 138/XIII that the legislator has opted to



⁽²⁾ Since the good repute assessment procedure foreseen in the PL 138/XIII largely follows the procedure already established in the RJASR, the impact of the new rules will be, in principle, greater to the insurance intermediators than to the insurance undertakings.

distinguish the sale with advice from sale without advice, now requiring, for the sale with advice, the assessment of the appropriateness of the insurance-based investment products. In this regard, note that it is predictable that the *bancassurance* channel is better prepared to implement the new rules on IBIPs;

- **Increase** of the minimum and maximum limits of the **finés** linked to the administrative offences.

In relation to the entry into force of the new rules, following the European legislator, the DL 138/XIII establishes **1 October 2018** as the date of effect. Nevertheless, please note that DL 138/XIII foresees a transitory regime applicable to the suitable qualification matters, granting to

- (i) the insurance or reinsurance intermediators natural persons registered on the date on which the law takes effect,
- (ii) the members of the board of directors of the insurance or reinsurance intermediators responsible for the insurance intermediations identified in the registry on the date on which the law takes effect, and
- (iii) the persons directly involved in the insurance or reinsurance distribution activity which perform such activity on the date on which the law takes effect,

an extended deadline to comply with the applicable rules on suitable qualification, in particular, until 23 February 2019.

Finally, we must stress that the DL 138/XIII leaves to ASF, the supervisory authority for insurance and pension funds, the adoption of regulations for the implementation of several matters provided thereof, which leads us to believe that the national legal framework on insurance distribution is far from being complete.

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